

1 controls or is controlled by or is under common control with a
2 public utility. Control includes instances where a person is
3 an officer, director, partner, trustee or person of similar
4 status or function or owns directly or indirectly or has a
5 beneficial interest in ten percent or more of any class of
6 securities of a person;

7 B. "average operating margin" means the average of
8 the operating margins of a rural electric cooperative over the
9 past five years;

10 C. "clean generation source" means a facility that
11 produces electrical energy:

12 (1) generated by the use of low- or zero-
13 emissions generation technology with substantial long-term
14 production potential;

15 (2) generated by the use of a renewable energy
16 resource that may include a solar, wind, hydropower or
17 geothermal resource or by the use of a biomass resource such as
18 agriculture or animal waste, small diameter timber, salt cedar
19 and other phreatophyte or woody vegetation removed from a river
20 basin or watershed in New Mexico, landfill gas and
21 anaerobically digested waste biomass or hydrogen produced from
22 renewable sources used in fuel cells; and

23 (3) that is not generated by use of fossil
24 fuel or nuclear energy;

25 [~~B-~~] D. "commission" means the public regulation

1 commi ssi on;

2 [C-] E. "commissioner" means a member of the
3 commi ssi on;

4 F. "customer-generator" means a retail customer of
5 a public utility or rural electric cooperative who is also the
6 operator of a clean generation source;

7 [D-] G. "municipality" means a municipal
8 corporation organized under the laws of the state, and H-class
9 counties;

10 H. "net metering" means measurement of the
11 difference between the electricity supplied to a customer-
12 generator by a public utility or rural electric cooperative and
13 the electricity that is generated by the customer-generator and
14 delivered to a public utility or rural electric cooperative at
15 the same point of interconnection during a billing period;

16 I. "net metering revenue reduction" means the
17 difference between a rural electric cooperative's or public
18 utility's applicable tariff energy charge and the lower of the
19 avoided cost as filed with the commission or three cents (\$.03)
20 per kilowatt-hour, multiplied by the total number of
21 kilowatt-hours that the commission estimates has been generated
22 by all of the clean generation sources that are net metered by
23 the public utility or rural electric cooperative;

24 J. "operating margin" means the amounts received or
25 receivable from the furnishing of electric service by a rural

1 electric cooperative in excess of costs incurred in the
2 furnishing of that service;

3 K. "peak generating capacity" means the total
4 maximum rated output, in kilowatts, of a clean generation
5 source;

6 [E-] L. "person" means an individual, firm,
7 partnership, company, rural electric cooperative organized
8 under Laws 1937, Chapter 100 or the Rural Electric Cooperative
9 Act, corporation or lessee, trustee or receiver appointed by
10 any court. "Person" does not mean a class A county as
11 described in Section 4-36-10 NMSA 1978 or a class B county as
12 described in Section 4-36-8 NMSA 1978. "Person" does not mean
13 a municipality as defined in this section unless the
14 municipality has elected to come within the terms of the Public
15 Utility Act as provided in Section 62-6-5 NMSA 1978. In the
16 absence of voluntary election by a municipality to come within
17 the provisions of the Public Utility Act, the municipality
18 shall be expressly excluded from the operation of that act and
19 from the operation of all its provisions, and no such
20 municipality shall for any purpose be considered a public
21 utility;

22 M. "rural electric cooperative" means a rural
23 electric cooperative organized pursuant to the Rural Electric
24 Cooperative Act;

25 [F-] N. "securities" means stock, stock

1 certificates, bonds, notes, debentures, mortgages or deeds of
 2 trust or other evidences of indebtedness issued, executed or
 3 assumed by a utility;

4 ~~[6.]~~ 0. "public utility" or "utility" means every
 5 person not engaged solely in interstate business and, except as
 6 stated in Sections 62-3-4 and 62-3-4.1 NMSA 1978, that may own,
 7 operate, lease or control:

8 (1) any plant, property or facility for the
 9 generation, transmission or distribution, sale or furnishing to
 10 or for the public of electricity for light, heat or power or
 11 other uses;

12 (2) any plant, property or facility for the
 13 manufacture, storage, distribution, sale or furnishing to or
 14 for the public of natural or manufactured gas or mixed or
 15 liquefied petroleum gas for light, heat or power or other uses;
 16 but the term "public utility" or "utility" shall not include
 17 any plant, property or facility used for or in connection with
 18 the business of the manufacture, storage, distribution, sale or
 19 furnishing of liquefied petroleum gas in enclosed containers or
 20 tank truck for use by others than consumers who receive their
 21 supply through any pipeline system operating under municipal
 22 authority or franchise and distributing to the public;

23 (3) any plant, property or facility for the
 24 supplying, storage, distribution or furnishing to or for the
 25 public of water for manufacturing, municipal, domestic or other

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 [bracketed material] = delete

1 uses; provided, however, nothing contained in this paragraph
2 shall be construed to apply to irrigation systems, the chief or
3 principal business of which is to supply water for the purpose
4 of irrigation;

5 (4) any plant, property or facility for the
6 production, transmission, conveyance, delivery or furnishing to
7 or for the public of steam for heat or power or other uses;
8 [~~or~~]

9 (5) any plant, property or facility for the
10 supplying and furnishing to or for the public of sanitary
11 sewers for transmission and disposal of sewage produced by
12 manufacturing, municipal, domestic or other uses; provided that
13 the terms "public utility" or "utility" as used in the Public
14 Utility Act do not include any utility owned or operated by a
15 class A county as described in Section 4-36-10 NMSA 1978 either
16 directly or through a corporation owned by or under contract
17 with such a county; or

18 (6) any plant, property or facility for the
19 sale or furnishing to or for the public of goods or services to
20 reduce the consumption of or demand for electricity or natural
21 gas that is a public utility under the definition found in
22 Paragraph (1) or (2) of this subsection;

23 [~~H-~~] P. "rate" means every rate, tariff, charge or
24 other compensation for utility service rendered or to be
25 rendered by a utility and every rule, regulation, practice,

1 act, requirement or privilege in any way relating to such rate,
2 tariff, charge or other compensation and any schedule or tariff
3 or part of a schedule or tariff thereof;

4 ~~[H.]~~ Q. "renewable energy" means electrical energy
5 generated by means of a low- or zero-emission generation
6 technology that has substantial long-term production potential
7 and may include, without limitation, solar, wind, hydropower,
8 geothermal, landfill gas, anaerobically digested waste biomass
9 or fuel cells that are not fossil fueled. "Renewable energy"
10 does not include fossil fuel or nuclear energy;

11 ~~[J.]~~ R. "service" or "service regulation" means
12 every rule, regulation, practice, act or requirement relating
13 to the service or facility of a utility;

14 ~~[K.]~~ S. "Class I transaction" means the sale, lease
15 or provision of real property, water rights or other goods or
16 services by an affiliated interest to a public utility with
17 which it is affiliated or by a public utility to its affiliated
18 interest;

19 ~~[L.]~~ T. "Class II transaction" means:

20 (1) the formation after May 19, 1982 of a
21 corporate subsidiary by a public utility or a public utility
22 holding company by a public utility or its affiliated interest;

23 (2) the direct acquisition of the voting
24 securities or other direct ownership interests of a person by a
25 public utility if such acquisition would make the utility the

1 owner of ten percent or more of the voting securities or other
2 direct ownership interests of that person;

3 (3) the agreement by a public utility to
4 purchase securities or other ownership interest of a person
5 other than a nonprofit corporation, contribute additional
6 equity to, acquire additional equity interest in or pay or
7 guarantee any bonds, notes, debentures, deeds of trust or other
8 evidence of indebtedness of any such person; provided, however,
9 that a public utility may honor all agreements entered into by
10 such utility prior to May 19, 1982; or

11 (4) the divestiture by a public utility of any
12 affiliated interest that is a corporate subsidiary of the
13 public utility;

14 ~~[M-]~~ U. "corporate subsidiary" means any person ten
15 percent or more of whose voting securities or other ownership
16 interests are directly owned by a public utility; and

17 ~~[N-]~~ V. "public utility holding company" means an
18 affiliated interest that controls a public utility through the
19 direct or indirect ownership of voting securities of that
20 public utility."

21 Section 2. A new section of the Public Utility Act is
22 enacted to read:

23 "[NEW MATERIAL] NET METERING SERVICE. --

24 A. If a public utility or a rural electric
25 cooperative makes net metering services available to a

1 customer-generator with a clean generation source that the
 2 public utility or rural electric cooperative serves, the
 3 customer-generator shall pay all costs for the acquisition and
 4 installation of the necessary metering equipment and customer-
 5 owned facilities required by a public utility or rural electric
 6 cooperative for interconnection. The customer-generator shall
 7 also pay all costs incurred by the public utility or rural
 8 electric cooperative for net metering, including costs for
 9 equipment or services that are necessary to meet safety and
 10 performance standards pursuant to the Public Utility Act.

11 B. A public utility or a rural electric cooperative
 12 may charge a customer-generator for the installation of any
 13 metering equipment required for net metering that is in
 14 addition to equipment that is required for the rate tariff
 15 under which the customer is normally served. A public utility
 16 or a rural electric cooperative may install additional
 17 equipment that it deems necessary to meter the total
 18 electricity flow in each direction. If the clean generation
 19 source of the customer-generator has a peak generating capacity
 20 of ten kilowatts or less, a party requesting the additional
 21 equipment shall pay the cost of additional equipment. If the
 22 clean generation source of the customer-generator has a peak
 23 generating capacity exceeding ten kilowatts, the public utility
 24 or rural electric cooperative may require the customer-
 25 generator to pay the cost of the additional equipment.

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1 C. Costs imposed by a public utility or a rural
2 electric cooperative on a customer-generator shall not exceed
3 those necessary to meet safety and interconnection requirements
4 pursuant to the Public Utility Act.

5 D. A customer-generator is responsible for costs
6 associated with operating and maintaining a clean generation
7 source of the customer-generator and for costs related to
8 modification of the clean generation source required for the
9 purposes of interconnectivity, safety and reliability.

10 E. A public utility or rural electric cooperative
11 shall make net metering available to a customer-generator with
12 a clean generation source with peak generating capacity of ten
13 kilowatts or less that meets the safety and interconnection
14 requirements pursuant to the Public Utility Act.

15 F. A public utility that is not a rural electric
16 cooperative shall make net metering available to a customer-
17 generator with a clean generation source that meets the safety
18 and interconnection requirements pursuant to the Public Utility
19 Act and that has a peak generating capacity exceeding ten
20 kilowatts, but not exceeding one hundred kilowatts; provided
21 that making net metering available to that customer-generator
22 does not increase the cumulative peak generating capacity of
23 all clean generation sources on the public utility's
24 distribution system above one percent of the average of that
25 public utility's peak retail demand over the past three

1 calendar years.

2 G. A rural electric cooperative shall make net
3 metering available to a customer-generator with a clean
4 generation source that meets the safety and interconnection
5 requirements pursuant to the Public Utility Act and that has a
6 peak generating capacity exceeding ten kilowatts, but not
7 exceeding one hundred kilowatts; provided that making net
8 metering available to that customer-generator does not increase
9 the net metering revenue reduction above one percent of the
10 rural electric cooperative's average operating margins.

11 H. A rural electric cooperative may allow, with
12 thirty days' notice to customers, additional net metering of
13 customer-generators beyond the limits imposed by Subsection G
14 of this section unless, within the thirty-day period after
15 notice, the cooperative receives customer protests from
16 customers representing a majority of the cooperative's load.

17 I. Once interconnected, net metering shall not be
18 withdrawn from a customer-generator on the basis of the
19 limitations specified in Subsections E through G of this
20 section.

21 J. The commission shall adopt rules for this 2005
22 act that shall become effective before June 1, 2006, including
23 uniform interconnection and safety standards consistent with
24 the requirements of Subsection C of this section and the safety
25 and performance standards of the Public Utility Act that

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1 include application procedures, reporting requirements for peak
2 loads and operating margins and provisions ensuring compliance
3 and timely response by public utilities and rural electric
4 cooperatives, including reporting requirements for disapproved
5 applications, to customer requests for interconnection."

6 Section 3. A new section of the Public Utility Act is
7 enacted to read:

8 "[NEW MATERIAL] TARIFFS-- CREDITS. --

9 A. An applicable tariff for retail electric service
10 by a public utility or rural electric cooperative to a
11 customer-generator shall be based on the applicable tariff of
12 the public utility or rural electric cooperative that is
13 applicable to the customer-generator's customer class.

14 B. A public utility or rural electric cooperative
15 shall provide a credit for net metering to a customer-generator
16 equal to the applicable tariff of the public utility or rural
17 electric cooperative for the customer-generator's customer
18 class with respect to the customer-generator's production of
19 electricity.

20 C. If a customer-generator's net aggregate bill
21 from the public utility or rural electric cooperative is less
22 than zero, a credit for net metering shall be carried over to
23 future bills of that customer-generator until the credit
24 balance equals zero.

25 D. A customer-generator shall not claim a credit

1 for net metering pursuant to this section from a public utility
 2 or rural electric cooperative with respect to a clean
 3 generation source pursuant to the Public Utility Act if the
 4 customer-generator has claimed a credit for net metering from
 5 another public utility or rural electric cooperative for the
 6 same clean generation source."

7 Section 4. A new section of the Public Utility Act is
 8 enacted to read:

9 "[NEW MATERIAL] SAFETY, INTERCONNECTION AND PERFORMANCE
 10 REQUIREMENTS. --

11 A. A net metering system used by a customer-
 12 generator shall comply with all relevant public utility or
 13 rural electric cooperative safety and interconnection
 14 requirements and all federal, state and local safety and
 15 performance standards and codes.

16 B. Safety and interconnection requirements for
 17 clean generation sources approved by the commission shall
 18 comply with the standards of the institute of electrical and
 19 electronics engineers for interconnecting distributed resources
 20 with electric power systems.

21 C. A public utility or rural electric cooperative
 22 may require a customer-generator, at that customer-generator's
 23 expense, to provide lockable switching equipment capable of
 24 isolating a clean generation source from the public utility's
 25 or rural electric cooperative's system

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1 D. The public utility or rural electric cooperative
2 shall not be liable directly or indirectly for permitting or
3 continuing to allow interconnection of a clean generation
4 source or for an act or omission of a customer-generator that
5 causes loss or injury to a person or property, including death
6 of a customer-generator or a third party. A customer-generator
7 shall indemnify a public utility or rural electric cooperative
8 for damage to a person or property and for any damage or loss
9 incurred by a third party or an heir or successor of that party
10 as the result of the installation or operation of a clean
11 generation source.

12 E. A customer-generator shall notify its public
13 utility or rural electric cooperative and the commission of the
14 intent to install a clean generation source at least sixty days
15 before its installation on an application form prescribed by
16 the commission. The public utility or rural electric
17 cooperative shall approve or disapprove the application and
18 notify the customer-generator of its approval or disapproval
19 within thirty days of the public utility's receipt of the
20 application. The public utility or rural electric cooperative
21 shall notify the commission of its approval or disapproval in
22 accordance with the commission's rules."

23 Section 5. Section 62-16-4 NMSA 1978 (being Laws 2004,
24 Chapter 65, Section 4) is amended to read:

25 "62-16-4. RENEWABLE PORTFOLIO STANDARD. --

1 A. A public utility shall meet the renewable
2 portfolio standard requirements, as provided in this section,
3 to include renewable energy in its electric energy supply
4 portfolio. Requirements of the renewable portfolio standard
5 are:

6 (1) no later than January 1, 2006, renewable
7 energy shall comprise no less than five percent of each public
8 utility's total retail sales to New Mexico customers;

9 (2) the renewable portfolio standard shall
10 increase by one percent per year thereafter until January 1,
11 2011, when the renewable portfolio standard shall reach a level
12 of ten percent of a public utility's annual retail sales in New
13 Mexico and shall remain fixed at ten percent for each year
14 thereafter;

15 (3) the renewable portfolio standard
16 established by this section shall be reduced, as necessary, to
17 provide for the following specific procurement requirements for
18 nongovernmental customers at a single location or facility,
19 regardless of the number of meters at that location or
20 facility, with consumption exceeding ten million kilowatt-hours
21 per year. On and after January 1, 2006, the kilowatt-hours of
22 renewable energy procured for these customers shall be limited
23 so that the additional cost of the renewable portfolio standard
24 to each customer does not exceed the lower of one percent of
25 that customer's annual electric charges or forty-nine thousand

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1 dollars (\$49,000). The calculation of the additional cost of
2 the renewable portfolio standard to each customer shall include
3 the amount of the total net metering revenue reductions, as
4 defined by the Public Utility Act, that the commission
5 determines should be recovered from that customer. This
6 procurement limit criteria shall increase by one-fifth percent
7 or ten thousand dollars (\$10,000) per year until January 1,
8 2011, when the procurement limit criteria shall remain fixed at
9 the lower of two percent of that customer's annual electric
10 charges or ninety-nine thousand dollars (\$99,000). After
11 January 1, 2012, the commission may adjust the ninety-nine-
12 thousand-dollar (\$99,000) limit for inflation. Nothing
13 contained in this paragraph shall be construed as affecting a
14 public utility's right to recover all reasonable costs of
15 complying with the renewable portfolio standard, pursuant to
16 Section [~~6 of the Renewable Energy Act~~] 62-16-6 NMSA 1978. The
17 commission may authorize deferred recovery of the costs of
18 complying with the renewable portfolio standard, including
19 carrying charges;

20 (4) the renewable portfolio shall be
21 diversified as to the type of renewable energy resource, taking
22 into consideration the overall reliability, availability,
23 dispatch flexibility and cost of the various renewable energy
24 resources made available by suppliers and generators; and

25 (5) renewable energy resources that are in a

1 public utility's electric energy supply portfolio on July 1,
2 2004 shall be counted in determining compliance with this
3 section.

4 B. If a public utility finds that, in any given
5 year, the cost of renewable energy that would need to be
6 procured or generated for purposes of compliance with the
7 renewable portfolio standard would be greater than the
8 reasonable cost threshold as established by the commission
9 pursuant to this section, the public utility shall not be
10 required to incur that cost; provided that the existence of
11 this condition excusing performance in any given year shall not
12 operate to delay the annual increases in the renewable
13 portfolio standard in subsequent years. When a public utility
14 can generate or procure renewable energy at or below the
15 reasonable cost threshold, it shall be required to add
16 renewable energy resources to meet the renewable portfolio
17 standard applicable in the year when the renewable energy
18 resources are being added.

19 C. By December 31, 2004, the commission shall
20 establish, after notice and hearing, the reasonable cost
21 threshold above which level a public utility shall not be
22 required to add renewable energy to its electric energy supply
23 portfolio pursuant to the renewable portfolio standard. The
24 commission may thereafter modify the reasonable cost threshold
25 as changing circumstances warrant, after notice and hearing.

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1 In establishing and modifying the reasonable cost threshold,
2 the commission shall take into account:

3 (1) the price of renewable energy at the point
4 of sale to the public utility;

5 (2) the transmission and interconnection costs
6 required for the delivery of renewable energy to retail
7 customers;

8 (3) the impact of the cost for net metering
9 and renewable energy on overall retail customer rates;

10 (4) the overall diversity, reliability,
11 availability, dispatch flexibility, cost per kilowatt-hour and
12 life cycle cost on a net present value basis of renewable
13 energy resources available from suppliers; and

14 (5) other factors, including public benefits,
15 the commission deems relevant; provided that nothing in the
16 Renewable Energy Act shall be construed to permit regulation by
17 the commission of the production or sale price at the point of
18 production of the renewable energy.

19 D. By September 1 of each year until 2012, and
20 thereafter as determined necessary by the commission, a public
21 utility shall file a report to the commission on its purchases
22 of renewable energy during the prior calendar year and a
23 procurement plan that includes:

24 (1) the cost of procurement for any new
25 renewable energy resource in the next calendar year required to

1 comply with the renewable portfolio standard; and

2 (2) testimony and exhibits that demonstrate
3 that the proposed procurement is reasonable as to its terms and
4 conditions considering price, availability, dispatchability,
5 any renewable energy certificate values and diversity of the
6 renewable energy resource; or

7 (3) demonstration that the plan is otherwise
8 in the public interest.

9 E. The commission shall approve or modify a public
10 utility's procurement or transitional procurement plan within
11 sixty days and may approve the plan without a hearing, unless a
12 protest is filed that demonstrates to the commission's
13 reasonable satisfaction that a hearing is necessary. The
14 commission may modify a plan after notice and hearing. The
15 commission may, for good cause, extend the time to approve a
16 procurement plan for an additional sixty days. If the
17 commission does not act within the sixty-day period, the
18 procurement plan is deemed approved.

19 F. The commission may reject a procurement or
20 transitional procurement plan if it finds that the plan does
21 not contain the required information and, upon the rejection,
22 may suspend the public utility's obligation to procure
23 additional resources for the time necessary to file a revised
24 plan; provided that the total amount of renewable energy to be
25 procured by the public utility shall not change.

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